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March 19, 1997

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William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

In re Matter of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996, **CC Docket No. 96-128**

Dear Mr. Caton:

Enclosed for filing in this docket are the original and one copy of a five-page letter to Mary Beth Richards addressing the federal tariffing requirements under the Commission's payphone orders. I sent this letter to Ms. Richards today on behalf of the RBOC Payphone Coalition. I would ask that you include the letter in the record of this proceeding in compliance with 47 C.F.R. § 1.1206(a)(2).

If you have any questions concerning this matter, please contact me at (202) 326-7902.

Thank you for your consideration.

Yours sincerely,



Michael K. Kellogg

cc: Mary Beth Richards

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March 19, 1997

Ex Parte Filing

Mary Beth Richards
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

In re Implementation of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996, **CC Docket No. 96-128**

Dear Mary Beth:

I wanted to thank you and your staff for taking the time to meet with me and the members of the RBOC Payphone Coalition on Monday. I believe that we made substantial progress in that meeting and in the earlier meeting with the enforcement division. We sincerely appreciate the dedication you all have shown toward identifying and working through, in a timely manner, the issues that have surfaced in this 11th hour of payphone regulatory reform.

In your continuing deliberations on the question of what federal tariffs are required, I thought it might be helpful for me to provide in writing the citations that underlie our reading of the payphone orders. As we discussed, the Coalition does not dispute that the Commission's payphone orders by their terms impose a federal tariffing requirement. Obviously, however, that requirement does not apply to *all* LEC services. Rather, the payphone orders, by their plain terms, place three limits on the types of services that must be federally tariffed.

First, the federal tariffing requirement applies only to *network features and functions*, and not to non-network services.

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This limitation follows directly from the language of the orders.¹ It is also consistent with the nature of the ONA and CEI rules on which the payphone orders were modeled. Thus, the payphone orders' federal tariffing requirement should be read as applying only to features and functions of the network (e.g., line-side answer supervision, if offered on an unbundled basis), and not to non-network services such as installation and maintenance, refund return/repair referral, and inside wire services.²

Second, the federal tariffing requirement applies only to *payphone-specific* network features and functions. Thus, for example, features of the smart-line used by dumb sets (e.g., line side answer supervision and call screening) would have to be federally tariffed if offered by and used by a LEC on an unbundled basis. But features that are generally available to all local exchange customers and are thus incidental to, but not primarily designed for, payphone service would not be subject to federal tariffing. Touchtone service and various custom calling features, for example, would not be considered payphone-specific and would not have to be federally tariffed. Once again, this reading of the orders is supported by their plain language³ and by common sense.

¹See, e.g., Recon. Order ¶ 166 ("We clarify that any unbundled network features provided to a LEC payphone operation must . . . be tariffed in the federal and state jurisdictions" (emphasis added)); Report and Order ¶ 146 ("[I]ncumbent LECs must offer individual central office coin transmission services to PSPs under nondiscriminatory, public, tariffed offerings if the LECs provide those services for their own operations" (emphasis added)); Recon. Order ¶ 162 ("[A]ny basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis. Those unbundled features or functions must be tariffed in the state and federal jurisdiction" (emphasis added)).

²Applying the tariffing requirement to these non-regulated services would represent unnecessary re-regulation of already competitive services, as the Commission itself has recognized. Recon. Order ¶ 166 (Report and Order does not "require access to unregulated services, such as installation and maintenance of unregulated CPE, and billing and collection" because these services "are available on a competitive basis and do not have to be provided by LECs as the only source of services.")

³Report and Order ¶ 147 ("We conclude that tariffs for payphone services must be filed with the Commission" (emphasis added)); id. ("[W]e conclude that Computer III tariff procedures and pricing are

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The purpose of the orders is to provide rules for payphones, not to impose federal regulation on all network services.

As I understand it, these first two limits are not in any way disputed. Questions arise only regarding the third, and final limiting principle -- that federal tariffing is required only for those payphone-specific network services that *the LEC's PSP itself* uses in providing payphone service. Under this limit, a LEC would file federal tariffs for an unbundled element *only* if its affiliated PSP uses that element. Thus, if a LEC-affiliated PSP uses only "smart" lines (for "dumb" payphone sets) but does not use unbundled features like line-side answer supervision, the LEC PSP would not file federal tariffs for line-side answer supervision, even if it offers that feature to competing PSPs in its state tariffs. On the other hand, if the LEC-affiliated PSP *itself* uses an unbundled feature like line-side answer supervision (as U S West does), a federal tariff would have to be filed (as U S West did).

This important limit on the federal tariffing requirement unambiguously appears in the text of the payphone orders. See, e.g., Report and Order ¶ 146 ("[I]ncumbent LECs must offer individual central office coin transmission services to PSPs under nondiscriminatory, public, tariffed offerings *if the LECs provide those services for their own operations*" (emphasis added)); id. ("[I]ncumbent LECs must provide coin service so competitive payphone providers can offer payphone services using either instrument-implemented 'smart payphones' or 'dumb' payphones that utilize central office coin services, or some combination of the two *in a manner similar to the LECs*" (emphasis added)); id. ¶ 148 ("any basic transmission services *provided by a LEC to its own payphone operations* must be available under tariff to other payphone service providers pursuant to Computer II" (emphasis added)).

The Order on Reconsideration is particularly clear on this point. It explains:

To implement [Section 276's requirements, the Report and Order] established a requirement that LECs provide *tariffed* payphone services to independent payphone providers *that they provide to the their own payphone*

more appropriate for *basic payphone services* provided by LECs to other payphone providers" (emphasis added)); Recon. Order ¶ 162 (LECs must "provide tariffed payphone services to independent payphone providers" (emphasis added)); ibid. (LECs to offer "tariffed, nondiscriminatory basic payphone services" to competing PSPs (emphasis added)).

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operations. Federal tariffing enables the Commission to directly ensure that payphone services comply with Section 276.

Recon. Order ¶ 162 (emphasis added). In the very same paragraph, the Order on Reconsideration explains that, "as required by the Report and Order, any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis. Those unbundled features must be tariffed in the state and federal jurisdiction." Ibid. Three paragraphs later, the Order on Reconsideration reiterates this yet again: "We clarify that any unbundled network features provided to a LEC payphone operation must be available on a nondiscriminatory basis to independent payphone providers and must be tariffed in the federal and state jurisdictions." Id. ¶ 165 (emphasis added).

This language is also consistent with the philosophy underlying the CEI and ONA principles on which the payphone orders were based. Federal tariffing of every feature the LEC itself takes ensures identical treatment of LEC and non-LEC PSPs. Moreover, absent this reasonable limit, the problems of mix-and-match and rate arbitrage -- with the consequent damage to state regulatory policy -- loom large. It is one thing to require federal tariffing of the limited number of network services that the LEC provides to its own operations. It is quite another to require LECs to file both state and federal tariffs for all network-based payphone services they offer, whether or not they use them themselves.⁴

Given the unambiguous language of the orders and the language's consistency with both CEI and ONA principles, it is not surprising that Coalition members concluded that the payphone orders did not require federal tariffs for unbundled elements unless those elements were used by the LEC-affiliated PSP. (SBC and U S West, however, would be in compliance even if the tariffing requirement is not limited to elements used by their own payphone units.) In this respect, I should note that the "Summary of Projected Reporting, Recordkeeping, and Other Compliance

⁴This is not to say that including such a limit eliminates these problems, or makes the federal tariffing requirement consistent with the ONA framework (which bars mixing and matching, and does not require federal tariffs for intrastate end-user features). Instead, it reduces the impact. Thus, Coalition members are willing to meet the Commission's tariffing requirements to expedite approval of the CEI plans, and will continue to work with the Commission on the broader issues raised thereby.

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Requirements" exhibits the *same* understanding. It states: "Any basic network services or unbundled features *used by a LECs operations to provide payphone services* must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis and must be tariffed in the state and federal jurisdiction." Recon. Order ¶ 263.

In our view, the appropriate approach for the Commission is to approve the CEI plans as they are today and then conduct a proceeding to determine whether or not federal tariffs should be required for network-based payphone services that are provided to independent PSPs but are not used by the LEC's payphone unit or affiliate. Whatever federal tariffing requirements ultimately are imposed, the Coalition members will of course comply with those requirements. The primary difficulty is one of timing. The majority of Coalition members have targeted April 1, 1997 as the transformation date in light of the difficulties inherent in mid-month accounting changes. The Coalition thus will support and comply with any reasonable resolution of the tariffing issue, so long as it does not delay the rapid transformation of the payphone industry that Congress intended, or defer Congress's twin goals of promoting "competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. § 276(b)(1).

Once again, I want to express my and the Coalition's gratitude for the attention you have paid to this matter.

Yours Sincerely,

Michael Kellogg
Michael K. Kellogg

cc: Regina Keeney
James Schlichting
Richard Welch
Christopher Wright

Tom Boasberg
James Casserly
James Coltharp
Dan Gonzalez

John Muleta
Michael Carowitz
Rose Crellin